



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
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September 4, 2001

Douglas Denny-Brown, General Counsel
Yvette Bigelow, Senior Counsel
RNK, Inc. d/b/a RNK Telecom
333 Elm Street
Dedham, MA 02026

Re: Petition of RNK, Inc. d/b/a RNK Telecom for review by the Department of Telecommunications and Energy of evidence in rebuttal of the Federal Communications Commission's presumption regarding Internet traffic, D.T.E. 01-64

Dear Mr. Denny-Brown and Ms. Bigelow:

We have reviewed your letter of August 16, 2001, in which you request that the Department of Telecommunications and Energy ("Department") review evidence submitted by RNK, Inc. d/b/a RNK Telecom ("RNK") to rebut the presumption used to define traffic to Internet service providers ("ISP-bound traffic") established by the Federal Communications Commission ("FCC") in its recent order.¹ As part of the interim cost recovery mechanism established in the FCC's order, the FCC instituted a 3:1 ratio of terminating to originating traffic, the excess of which would be defined as ISP-bound traffic, and thus subject to the series of rate

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Inter-carrier Compensation for ISP-bound Traffic, CC Docket No 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001) ("Order on Remand").

and growth caps established in the order.² You stated in your letter that, pursuant to the requirements in the FCC's Order on Remand, you were petitioning the Department for determination whether RNK had successfully rebutted the FCC's presumption, entitling RNK to reciprocal compensation for traffic delivered to non-ISP customers.

On August 29, 2001, the Department issued Complaint of MCI WorldCom, Inc. Against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996, D.T.E. 97-116-F (2001) ("D.T.E. 97-116-F Order"). In the D.T.E. 97-116-F Order, the Department determined that the Department's earlier D.T.E. 97-116-C Order, and by extension its D.T.E. 97-116-D and D.T.E. 97-116-E Orders, were not preempted or nullified by the FCC's Order on Remand, and that our conclusion in our D.T.E. 97-116-C Order that ISP-bound traffic (which the Department defined as traffic above a rebuttable 2:1 terminating to originating ratio) is not subject to reciprocal compensation prevails in Massachusetts throughout the FCC's interim period. D.T.E. 97-116-F at 10-20.

As we have determined that the FCC's interim cost recovery mechanism is not in effect in Massachusetts, the FCC's 3:1 presumption and the FCC's requirement that state commissions determine whether the presumption has been rebutted, is likewise not in effect in Massachusetts. Therefore, there is no need for the Department to address your request at this time. As was the case prior to the issuance of the FCC's Order on Remand, you must first present data to Verizon for determination whether RNK has rebutted the Department's 2:1 presumption, thereby entitling RNK to reciprocal compensation for non-ISP-bound traffic.

If you have any questions, please contact Mike Isenberg, Director of the Telecommunications Division, at (617) 305-3744.

By the Commission,

_____/s/_____
James Connelly, Chairman

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Paul B. Vasington, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

² Order on Remand at ¶ 79.

Mr. Denny-Brown
Ms. Bigelow
D.T.E. 01-64

Page 3

_____/s/_____
Deirdre K. Manning, Commissioner